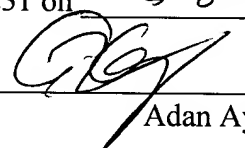


IN THE UNITED STATES PATENT AND TRADEMARK OFFICEIn re application of: **Roger Q. SMITH**~~Serial~~ No.: **09/153,621**Examiner: **T. Dinh**~~Filed~~: **September 15, 1998**Group Art Unit: **2841**~~FOR~~ **HEAVY-DUTY AUDIO EQUIPMENT**Assistant Commissioner for Patents
Washington, DC 20231#13/Supp.
Response
R. Tyson
5/21/01RESPONSE TO OFFICE ACTION

5/22/01

I, Adan Ayala, Reg. No. 38,373, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington DC 20231 on 5-8-01


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Dear Sir:

This is in response to the Office Action mailed March 14, 2001.

Currently in the application are Claims 1-6 and 15-20.

The Examiner has provisionally rejected Claims 1-6 under the doctrine of double patenting over Claims 21-27 of copending Application No. 09/262,751. This rejection is respectfully traversed. This is because Applicant has elected claims other than Claims 21-27 of the copending application, pursuant to a restriction requirement. Accordingly, the double patenting rejection has been rendered moot.

The Examiner has rejected Claims 1-6 under 35 USC § 112, second paragraph, for indefiniteness. This rejection is respectfully traversed.

In particular, the Examiner has asked whether the phrase “flexibly connected” in Claim 1 should be “flexible connecting.” In response, Applicant notes that the protective bar is flexibly connected to the housing. Therefore, no indefiniteness exists.

Similarly, the Examiner has asked whether the phrase “flexibly connecting” in Claim 3 should be “flexible connecting.” In response, Applicant notes that the connector assembly flexibly connects the protective bar to the housing. Therefore, no indefiniteness exists.

The Examiner has rejected Claims 1-6 under 35 USC § 103(a) as being unpatentable over US Patent No. 2,058,407 (“Brown”). This rejection is respectfully traversed.

Claim 1 calls for an audio equipment comprising a housing, audio circuitry installed within the housing, and a first protective bar flexibly connected to the housing.

Admittedly, Brown discloses a housing containing audio circuitry, and that the housing is connected to a leg assembly 14,15. However, this leg assembly is neither the protective bars called for in Claim 1, nor flexibly connected to the housing.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03 (citing *In re Royka*, 180 USPQ 580 (CCPA 1974)). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *Id.* (quoting *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970)) (emphasis added). In the present case, the Examiner has failed to show that the leg assembly is “protective.”

As discussed in the specification, the protective bar is provided to protect the housing from being destroyed at a jobsite because of: (1) tools being dropped on the housing; or (2) the radio falling down. In Brown, however, the leg assembly does not serve to protect the radio. For example, Applicant notes that FIG. 5 of Brown shows no protection for the housing surrounding speaker 6a against any side blows.

Accordingly, the leg assembly only serves to support the radio in place. Therefore, the leg assembly is not a “protective” bar as called for in Claim 1. Thus, Brown cannot render Claim 1 and its dependent claims unpatentable.

Even if the leg assembly is considered a protective bar, it is not flexibly connected to the housing. Brown instead discloses a pivotal connection between the housing and the leg assembly. See col. 2, lns. 38-51. Thus, Brown does not teach or suggest a flexible connection between the protective bar and the housing. Such flexible connection is important as it provides “play” between the protective bar and the housing to absorb part of all of the shock occurring when the radio is dropped. Brown instead teaches a pivotal connection with little play and high friction, so that the radio can remain in a tilted position. See col. 2, lns. 43-51.

Nevertheless, the Examiner chose to ignore Brown’s explicit teaching and relied on Fredman v. Harris-Hub Co., 163 USPQ 397 (N.D. Ill. 1969), for the flexible connection between the housing and the protective bar. However, the Examiner’s reliance on Fredman is improper under MPEP § 2144.04.

Under the MPEP, the Examiner may use the rationale used by the court “if the facts in a prior legal decision are sufficiently similar to those in an application under examination.” However, the facts of the present case and Fredman are not similar. In

Furthermore, Collins does not disclose a flexible gasket, which is part of a connector assembly flexibly connecting the protective bar to the housing, as called for in Claims 4-5. The Examiner points to stop ring 30. This ring 30, however, does not constitute part of a connector assembly flexibly connecting the protective bar to the housing. Accordingly, Brown and Collins cannot render Claims 4-5 unpatentable.

In view of the foregoing, all the claims are patentable and the application is believed to be in condition for formal allowance. Reconsideration of the application and allowance of Claims 13 and 15-29 are respectfully requested.

No fee is due for the present amendment. Nevertheless, the Commissioner is authorized to charge payment of any fees due in processing this response, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,



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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/153,621	
	Filing Date	September 15, 1998	
	First Named Inventor	Roger Q. Smith	
	Group Art Unit	2841	
	Examiner Name	T. Dinh	
Total Number of Pages in This Submission		Attorney Docket Number	TN-1444

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